

The Honorable Richard A. Jones  
The Honorable J. Richard Creatura

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

EL PAPEL, LLC, et al.,

Plaintiffs,

v.

JENNY DURKAN, et al.,

Defendants.

NO. 2:20-cv-01323-RAJ-JRC

DEFENDANT ROBERT W.  
FERGUSON'S OBJECTIONS TO  
REPORT AND  
RECOMMENDATION

NOTE ON MOTION CALENDAR  
October 15, 2021

**OBJECTIONS**

Defendant Attorney General Robert W. Ferguson respectfully submits two objections to the Report and Recommendation entered on September 15, 2021. Dkt. #141.

First, the Report and Recommendation addressed the merits of Plaintiffs' claims because "plaintiffs are claiming nominal damages and declaratory relief." Dkt. #141 at 13. But for the reasons injunctive relief against the State is moot, so too is Plaintiffs' claim for declaratory relief. *See* Dkt. #104 at pp. 21–22; Dkt. #121 at pp. 11–12. This is because a claim for declaratory relief seeks to determine the legal rights and obligations of the parties with prospective effect. Because it is prospective, such a claim may be mooted by changed circumstances, like changes in a defendant's policies that "make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000). By contrast, a claim for retrospective relief, like a claim for

nominal damages, is unaffected by such a change in circumstances. The State Moratorium ended on June 30, 2021, mooted Plaintiffs' requests for both injunctive *and* declaratory relief. *See* Engrossed Second Substitute S.B. 5160, 67th Leg., Reg. Sess. (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws, ch. 115; Proclamation 20-19.6.

Second, the Report and Recommendation "assumes that the State's restriction substantially impaired the contractual relationship." Dkt. #141 at p 14. While this assumption does not amount to a factual finding or conclusion of law, in an abundance of caution, Attorney General Ferguson objects to it to preserve any future argument that the State Moratorium did not substantially impair contractual relationships for the reasons stated in the State's cross-motion for summary judgment. *See* Dkt. #104 at pp. 23–29; *see also* Dkt. #121 at pp. 13–15.

DATED this 27th day of September, 2021.

ROBERT W. FERGUSON  
Attorney General

/s/ Cristina Sepe

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*Attorneys for Defendant Robert W. Ferguson,  
in his official capacity as Attorney General  
of the State of Washington*

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to all counsel of record.

DATED this 27th day of September 2021, at Tacoma, Washington.

/s/ Cristina Sepe

CRISTINA SEPE, WSBA #53609  
Assistant Attorney General